



file Deep Sea Ocean Mining

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Rockville, Maryland 20852

November 2, 1979



Mr. George R. Grove
Executive Director
Port of Astoria
Post Office Box 569
Astoria, Oregon 97103

Dear Mr. Grove:

As you know, the law firm of Nossaman, Krueger and Marsh (NKM) has been given a contract by this Office to perform an analysis of federal, state and local laws which may be applicable to the siting and operation of manganese nodule processing plants and other associated facilities on the west coast of the United States. I would like to thank you for the assistance you and/or your staff provided them earlier in the study, and would also like to request your further assistance by asking you and/or your staff to critique their preliminary findings.

Toward this end, I have enclosed a copy of that portion of NKM's Phase II Progress Report which deals with your state. Your review and comments on it will help to ensure that the results of this study are as complete and as accurate as possible. In order for NKM to incorporate them into the final report, this Office should receive your comments no later than November 30, 1979 at the following address:

Marine Minerals Division (PP1)
NOAA
Rockville, Maryland 20852

Please accept my appreciation for your cooperation. If there are any questions, please call either Karl Jugel or Ed Crump of this Office at (301) 443-8323.

Sincerely yours,

Amor L. Lane

Amor L. Lane, Director
Marine Minerals Division
Office of Policy and Planning

Enclosure

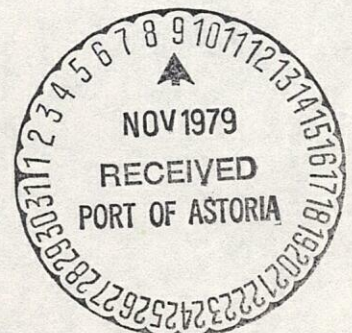


AN ANALYSIS OF APPLICABLE
LAW CONCERNING SEABED MINERAL
PROCESSING IN CALIFORNIA,
WASHINGTON, OREGON AND ALASKA

Phase II Progress Report:
Oregon, ~~Washington and Alaska~~ Law

Submitted to the U.S. Department of Commerce by
Nossaman, Krueger & Marsh
Pursuant to Contract No. NA79SAC00640

October 17, 1979.



OREGON

The analysis of Oregon laws and regulations applicable to the siting, construction and operation of a manganese nodule processing plant and related facilities will follow the format adopted for the previous sections, namely an examination of each of the four sub-systems from port facilities to waste disposal. An overview of the land use regulatory framework and the state permit process will initiate the discussion.

INTRODUCTION: OREGON LAND USE REGULATION AND STATE PERMIT PROCESS

Land use in Oregon is regulated under the 1973 Land Use Act^{1/} which established the Land Conservation and Development Commission within a Department of Land Conservation and Development. The Act laid the foundation for a state land use program by requiring each city and county "to prepare and adopt comprehensive plans consistent with state-wide planning goals and guidelines approved by the commission"^{2/}. Such plans, which must interrelate all functional and natural systems and activities relating to the use of lands, are then submitted to the Commission (LCDC) for review and approval for compliance with the goals, a procedure known as an acknowledgement^{3/}.

Nineteen state-wide planning goals were adopted by the LCDC from 1974 to 1976^{4/}. The first two are procedural, dealing with citizen involvement and the land-use planning process, and the remaining seventeen are substantive and site- or function-specific.

The Oregon Supreme Court has held that an acknowledged plan is the controlling land-use planning instrument,

in effect a local "constitution"^{5/}. Until a plan is acknowledged, however, or where either the proposed action was not contemplated in the plan or conditions have substantially changed, the state-wide planning goals govern^{6/}. Of the 277 local jurisdictions in the State, 40 have acknowledged plans, 60 are presently under review by the LCDC, and about 40% have been sent back for revision^{7/}.

The acknowledgement process ensures consistency of local plans with state planning goals, and thus the development of a coordinated state land-use program. Actions of Federal, State and local agencies and government units must comply with the acknowledged plans or the goals.^{8/} The responsibility of state agencies to apply the goals or acknowledged plans is clarified in the State Permit Consistency Rule adopted by the LCDC in September, 1978^{9/}. The rule requires state agencies to develop a program of review to ensure the consistency of permit proposals with the acknowledged plan, or if none exists, the state-wide goals. The program must include a listing of Class A permits, requiring public notice and a discretionary hearing before issuance, and Class B permits which do not require notice or hearing. Where the agency determines that the proposed activity or use is inconsistent with either the plan or the goals, it must deny the permit. State agencies may deny or conditionally approve a permit when compliance with a Goal or Plan requires an action that can only be taken by the affected local government.

In most cases state agencies may rely on the local authority's determination of consistency or inconsistency with its acknowledged plan, or if applicable, the state-wide Goals. In the latter case the local authority should provide notice and the opportunity for public and agency review and comment, failing which the state agency may make a consistency finding only if no objections were raised during the local review.^{10/}

The Permit Consistency Rule is also the mechanism by which the "federal consistency" provision of the federal Coastal Zone Management Act^{11/} is satisfied. As shown in the analysis of federal law, the Act requires that (a) federal agencies conducting or supporting activities directly affecting the coastal zone must do so in a manner consistent with an approved State management program, and (b) any applicant for a federal permit to conduct an activity affecting land or water uses in the coastal zone must obtain a certification that the proposed activity complies with the State's approved program^{12/}. The Oregon Coastal Management Program is an approved program and thus a State agency's determination of consistency will constitute the required certification.

Under the original Land Use Act, appeal and review of land use decisions lay to the LCDC and thence to the state Court of Appeals. This provision has recently been amended and, effective November 1, 1979, any person whose interests are adversely affected or who is aggrieved by a land use decision

may petition a newly created Land Use Board of Appeals for review^{13/}. "Land use decision" is defined as including both local authority decisions concerning Goals, Plans and zoning ordinances and final decisions or determinations of state agencies requiring the application of the planning goals. The time frame for this appeals process is 30 days for filing a notice of intent to appeal, 20 days for the authority or agency to send the Board a copy of the record, and a further 20 days for the filing of a petition for review. The Board has 90 days after the filing of a petition in which to issue a final order. A land use decision may be reversed or remanded on grounds of excess of jurisdiction; procedural, constitutional or state planning goal violations; improper construction of law; and lack of evidentiary support. Appeal lies to the Court of Appeals upon petition filed within 30 days of the final order, and the Court may order a stay of the order where irreparable harm to the petitioner or a colorable claim of error in the order is shown.^{14/}

The stated intent of this amended appeals procedure to expedite land use decision-making is reflected also in the permit application process administered by the State Permit Center, part of the Intergovernmental Relations Division of the State Executive. The Statute governing permits, ORS 447.800 to 447.865, states as its purpose:

"... to simplify the permit issuance procedure, accelerate decision-making, make available permit application information for state government at one place, encourage federal and local government agency participation in a coordinated procedure of permit issuance and provide more effective notice to affected or concerned citizens"^{15/}

Under this "one-stop" permit program an applicant may submit a master application form for any project requiring two or more permits.^{16/} This form, which must contain detailed information on the nature and location of the project, is then circulated by the State Permit Center to each state agency having a possible interest in the application. In addition to state permits, Federal permits administered by State agencies such as NPDES and air pollutant discharge permits are also administered through this process. Each notified state agency then has thirty days in which to advise the Center as to an interest it may have in the application and the pertinent permit programs under its jurisdiction. If an agency fails to respond within that time or indicates that it has no interest in the application it cannot subsequently require a permit of the applicant, unless the application lacked pertinent information or contained false or misleading information^{17/}.

The process results in an early determination of all

State, and most Federal, development regulatory requirements. Applicants may request a pre-application conference with the relevant agencies to identify the permit requirements and the type and quantity of information needed. Design requirements can also be ascertained prior to the completion of project design work, thus avoiding costly delays and modifications. For complex development projects such as a manganese nodule processing plant and facilities, the Center would form a siting team to co-ordinate the process and ensure that the agencies' permit terms and conditions do not conflict; should any conflicts appear, the Director is authorized by the Statute to resolve them^{19/}. As the application procedure progresses, additional informal conferences may be convened by the Center, to deal with any questions that may arise.^{20/}

Public hearings required by more than one agency may be consolidated into a single hearing at the request of the applicant or an agency^{21/}. In this case notice of the hearing must be mailed to the applicant, affected agencies and interested persons, and published in local newspapers for three weeks, the last no more than 20 days prior to the date of the hearing. Contested case hearings may also be consolidated, and the parties may be required to appear at a prehearings conference to establish procedures to expedite the hearing^{22/}.

Within 30 days of the hearing the Director of the Center will issue a proposed order, to which parties other than affected agencies may file exceptions. Each participating

affected agency must issue a final order, setting forth findings of fact and conclusions of law^{23/}, which may be appealed by any party aggrieved by the order^{24/}.

The State Permit Center does not deal with permits issued by Federal agencies, such as the Corps of Engineers. The procedure in the latter case will be more appropriately discussed in the section dealing with port facilities.

The foregoing discussion of the Oregon land use and permit program has attempted to outline the general State-wide framework in which a prospective processing plant will operate. The analysis that follows will focus on the specific regulatory and permit requirements applicable to each of the four subsystems of the plant: port facilities, port-to-plant transportation, the processing plant itself, and waste disposal.

I. PORT FACILITIES

In the technical section of the report it is assumed that, in the most likely process, nodules in slurry form will be discharged at either onshore slurry terminals or at offshore single-point moorings into an underwater slurry pipeline. If the nodules are brought in in bulk, or dried and ground form, they would be discharged at onshore terminals.

The Corps of Engineers dredge and fill permit

requirements for construction or alteration of harbor facilities, placement of structures (including a pipeline) in navigable waters, or dredging to deepen a navigable channel, are described in the section on Federal law. In addition, Oregon law requires that certain permits be obtained for construction work, dredge and fill, and submarine pipelines, from State agencies and local authorities.

State and local permit requirements and procedures for obtaining them will be described below. It must be remembered, however, that any state or local action, including the issuance of permits, must be consistent with the applicable State-wide Planning Goals or an acknowledged local plan, which itself must conform to the goals.^{26/} Any activities related to port facilities will necessarily be conducted within the Oregon coastal zone, which is defined in the Oregon Coastal Management Program as extending

"... from the Washington border on the north to California on the south, seaward to the extent of state jurisdiction as recognized in federal law [3 nautical miles], and inland to the crest of the coastal mountain range. Three exceptions exist to the eastern boundary. They are:

1. The Umpqua River Basin, where the coastal zone extends to Scottsburg;
2. The Rogue River Basin, where the coastal zone extends to Agness; and
3. The Columbia River Basin, where the coastal zone extends to the downstream end of Puget Island." ^{27/}

The applicable goals are therefore the Coastal State-wide Planning Goals, Numbers 16 through 19, covering Estuarine Resources, Coastal Shorelands, Beaches and Dunes and Ocean Resources. With the exception of Goal 18, Beaches and Dunes, which would not apply to a processing plant port facility, these goals will now be examined.

Statewide Planning Goals and Guidelines 16, 17, 18 and 19 for Coastal Resources.

The Land Conservation and Development Commission adopted four coastal resources goals in implementation of the Oregon Coastal Management Program, to take effect on January 1, 1977. These goals establish guidelines for the preservation and rational development of four distinct coastal areas: estuaries, coastal shorelands, beaches and dunes, and ocean resources. For each area, there are general priorities of overall use, and there may also be sub-priorities of use in specific divisions of a larger area. Throughout the coastal resources goals a distinction is made between "water-dependent" and water-related" uses and all other uses. The definitions of these terms given in Appendix E to the Statewide Planning Goals are as follows:

(i) A water dependent use is

". . . a use or activity which can be carried out only on, in, or adjacent to water areas because the use requires access to the water body for water-bound transportation, recreation, energy production, or source of water."

(ii) A water-related use is one which is

". . . not directly dependent upon access to a water body, but which provide goals or services that are directly associated with water-dependent land or waterway use, and which, if not located adjacent to water, would result in a public loss of quality in the goods or services offered. Except as necessary for water-dependent or water-related uses or facilities, . . . factories . . . are not generally considered dependent on or related to water location needs."

It is clear that a manganese nodule processing plant is unlikely to be considered a water-dependent or water-related use for the purposes of the statewide planning goals, or under any local comprehensive plan to be acknowledged as consistent with those goals. A port facility for the unloading of manganese nodules might well fall into one or both of these categories however, as might a port to plant transportation system involving substantial use of water. Certainly transportation of nodules by barges would be regarded as water-dependent.

The question of water-dependency is important with regard to the priority given to particular uses in each of

the four coastal areas. The three relevant goals are outlined below.

(1) Estuarine Resources Goal (No. 16).

This goal provides that comprehensive plans for each estuary shall provide for "appropriate uses" with "as much diversity as is consistent with the overall Oregon Estuary Classification, as well as with biological, economic, recreational and aesthetic benefits of the estuary."

Dredging and filling are to be allowed only:

- (a) if required for navigation or other water-dependent uses that require an estuarine location;
- (b) if a public need is demonstrated;
- (c) if no alternative upland locations exist; and
- (d) if adverse impacts are minimized as much as is feasible.

Comprehensive plans are required to classify estuarine areas into "management units" each of which will have specific priority uses. For example, a unit designated as "natural" will have water-dependent recreation, research and educational observation as high priority uses, while a unit designated for "development" will also allow navigation and water-dependent commercial uses. In addition to these

specific priorities, general priorities are set forth for all estuarine areas as follows:

(i) Uses which maintain the integrity of the estuarine ecosystem;

(ii) Water-dependent uses requiring an estuarine location, as consistent with the overall Oregon Estuarine Classification;

(iii) Water-related uses which do not degrade or reduce the natural estuarine resources and values;

(iv) Non-dependent, non-related uses which do not alter, reduce, or degrade the estuarine resources and values.

2. Coastal Shorelands Goal (No. 17).

The restrictive provisions of this goal are currently limited to land within 200 feet measured horizontally from the shoreline, or, where there are tidal marshes, the 200 feet from the inland extent of the marshes. This is a temporary provision to allow local authorities to identify and approve areas constituting coastal shorelands within their jurisdictions.

The overall goal is stated as being "to conserve, protect, where appropriate develop and where appropriate restore the resources and benefits of all coastal shorelands"

and "to reduce the hazard to human life and property, and the adverse effects upon water quality and fish and... wildlife habitat, resulting from the use and enjoyment of [the] shorelands." General priorities for overall use are:

- (1) Promote uses to maintain the integrity of estuaries and coastal waters;
- (2) Provide for water-dependent uses;
- (3) Provide for water-related uses;
- (4) Provide for non-dependent, non-related uses which retain flexibility of future use and do not prematurely or inalterably commit shorelands to more intensive uses;
- (5) Provide for development, including non-dependent, non-related uses, in urban areas compatible with existing or committed uses;
- (6) Permit non-dependent, non-related uses which cause a permanent or long-term change in the features of coastal shorelands only upon a demonstration of public need.

3. Ocean Resources Goal (No. 19).

This goal states that:

" . . . all local state and federal plans, policies, projects, and activities which affect the territorial area shall

be developed, managed and conducted to maintain, and where appropriate, enhance and restore, the long-term benefits derived from the seashore oceanic resources of Oregon."

The only part of this goal which is likely to be relevant to the manganese nodule processing plant is the section providing guidelines for the regulation of navigation and ports. There are no specific plan requirements set forth in this goal, so that discretion as to the regulation of port construction and operation will rest largely with the local authority concerned, as long as its plan is broadly consistent with the overall goal set forth above.

Permit Requirements and Procedures for Port Facilities

The State permits required for activities related to port facilities are as follows:^{28/}

Dredging and filling (ocean, estuary, and navigable rivers):

Removal and Fill Permit from the State Lands Division.

Lease of State-owned submerged and submersible lands from the State Lands Division.

A permit for ocean shore development may have to be obtained from the Department of Transportation.

Docks and Wharves, Piling and Mooring Dolphins:

Lease of State-owned submerged and submersible lands.

Ocean shore development permit may be necessary.

In addition, the Department of Commerce will review

building plans, and the Workman's Compensation

Board certifies shore-based material handling devices.

Submerged Pipelines:

Removal and Fill Permit from the State Lands Division.

Easement over submerged or submersible lands (SLD).

On the ocean shore, an ocean shore development permit may be required from the Department of Transportation.

Construction permits from the local authority -- city or county -- may also be required. Building in the State of Oregon is administered by the State in some areas and by local government in other areas.^{29/} It should be noted that the ports themselves have no permit or regulatory authority. This authority is vested in the city or county having jurisdiction over the port area.^{30/} The Port of Astoria, for example, comprises Clatsop County. The Port Authority would nevertheless play an active part in helping the applicant obtain the necessary permits, providing the land needed for the project and checking the zoning status of the land.^{31/}

Dredge and fill activities for the port facility of a processing plant would require a Removal and Fill Permit from the State Lands Division (SLD). The relevant Statute^{32/} provides that:

- "1... no person ... shall remove any material from the beds or banks or fill any waters of this State without a permit issued under authority of the Director of the Division of State Lands, or in a manner contrary to the conditions set out in the permit.
2. No governmental body shall issue a lease or permit contrary or in opposition to the conditions set out in the permit..."

Any removal or fill of 50 cubic yards or more of material is governed by this provision.^{33/}

The application procedure is set out in OAS 541.620:

- "1. Each applicant for a permit...shall file a written application with the Director..., specifying the nature and amount of material to be removed or the amount of fill, the waters and the specific location..., the method...and the times /Of removal or filling/. The Director may require additional information as is necessary to enable him to determine whether the granting of the permit applied for is consistent with the protection, conservation and best use of the water resources of this State...
2. The Director... shall furnish to any member of the public upon his written request...a copy of any application for a permit."

A permit to remove material will issue if the removal will not be inconsistent with the protection, conservation and best use of State water resources.^{34/} More stringent requirements attach to a permit to fill. The proposed fill must not unreasonably interfere with navigation, fishing and recreation, and the Director must consider the public need and benefits likely to result, and whether the proposed fill conforms to conservation, public health and safety and existing uses, and is consistent with a zoning or land use plan for the area.^{35/} A substantial fill in an estuary for a nonwater dependent use will be permitted only if the fill is for a public use and would satisfy a public need that outweighs harm to navigation, fishery and recreation.^{36/} This provision should not present a problem for the port

facilities or submarine pipeline requirements of a processing plant, since these are clearly water-dependent uses.

A far more troublesome requirement, however, is contained in a 1979 addition to the Statute, which provides that the Director shall require mitigation as a condition of any permit for filling or removal from an intertidal or tidal marsh area of an estuary.^{37/} "Mitigation" is defined as:

"the creation, restoration or enhancement of an estuarine area to maintain the functional characteristics and processes of the estuary, such as its natural biological productivity habitats and species diversity, unique features and water quality."

The mitigation requirement may be waived in certain specified circumstances which would generally not apply to a processing plant port facility. Clearly, if dredging and filling for the port facility is to take place in an intertidal or tidal marsh area of an estuary the need to prepare a mitigation program could be a substantial hurdle and cause considerable delays. This conclusion was confirmed in discussions with Port Authority representatives in Oregon.^{38/}

In carrying out its Removal and Fill permit authority, the State Lands Division interacts with the Corps of Engineers and the local authority.^{39/} The permit review process is initiated by an application to the district office of the Corps of Engineers. A copy is sent to the SLD and public notice of the proposal is issued. The Division then distributes the application to all interested State agencies, local

authorities and interested members of the public such as environmental groups, with a request for comments. At the same time the city or county will develop its own permits.

SLD Fill and Removal Permits are listed as Class A Permits in the State Permit Consistency Rule developed by the Land Conservation and Development Commission.^{39a/} It will be recalled that the Rule requires that State agencies develop programs to assure that permit approvals are consistent with Statewide Planning Goals and acknowledged Comprehensive Plans. Class A permits may be approved only after public notice of the proposed permit, including a statement that the proposed activity is being reviewed for consistency with the Goals or Plan, and the notice must be distributed to the appropriate city or county citizen advisory committee. In addition, a public hearing may be required at the agency's direction, in which testimony on consistency will be heard. In its review of the permit application, the State agency must consider comments received from the public and other agencies, and, based on these comments, determine whether or not the proposed permit is consistent with the goals or an acknowledged plan.^{39b/}

When all comments have been received and reviewed, and after the city or county permits have been issued, the SLD will issue a State Removal and Fill permit for a qualifying proposal. The Division will work together with the Land Conservation and Development Commission in drafting

a recommendation to the State Governor and a letter representing the State's position will be sent to the Corps of Engineers.

Denial of a permit, or the attachment of any condition to a permit issued, may be appealed by the applicant by filing notice of appeal within 10 days of the order. In addition, any "affected party", which is interpreted to include environmental groups, may appeal within 60 days of the issuance of a permit.^{40/}

Estimate of the time needed for the State permit process range from 30 days to one year, depending on the amount of controversy generated by the project, the extent of local and political support, and delaying factors arising in the negotiations or through judicial review.^{41/} The Corps of Engineers permit will generally require a greater length of time, from one to two years.

The construction of structures such as docks, pilings and mooring dolphins, and offshore mooring points in State waters will also require an application to the SLD for a lease. The Statute applies to permanent or long-term structures extending over the waters of State-owned submerged and submersible lands beyond the ordinary high water line. The "ordinary high water line", synonymous with "mean high water line", is defined as the line on the bank or shore to which the water ordinarily rises in season.^{42/}

Any person proposing a permanent or long term use of non-exempt State-owned submerged or submersible lands must obtain a lease from the Division by submitting the required application form with maps and plot plans.^{43/} In deciding whether or not to grant a lease the Division must take into account certain stipulated factors such as consistency of the proposed lease with an adopted land use plan and state law, and whether it will result in unreasonable interference with the statutory rights of adjacent landowners. The Division may order a public hearing to aid in reaching a decision^{44/}. The lease period will generally be for 20 years, renewable.

If the proposed fill and construction work is to take place in the ocean shore area it will also be regulated by the Department of Transportation. The Department has statutory jurisdiction and permit jurisdiction over improvements on the ocean shore, defined as "the land lying between extreme low tide of the Pacific Ocean and the line of vegetation".^{45/} No development may take place in this area without a permit from the Department, obtained by application to the State Highway Engineer. Notice of the application must be posted near the proposed site and given to any person requesting it. A hearing may be demanded by either the applicant or 10 or more other interested persons within 30 days, and notice of the hearing must then be similarly posted. After the hearing, or after the time for requesting one has expired (30 days) the Engineer must grant the permit if approval is not adverse to the public interest. If no action is taken on a satisfactory

application within 60 days of its receipt, or within 30 days^{46/} of a hearing, the application will be considered denied.

Any person aggrieved by the decision may appeal to the circuit court of the county by filing a petition for review within 60 days.^{47/}

The laying of an underwater slurry pipeline from an offshore mooring point will require application to the State Lands Division for an easement for facilities in submerged and submersible state lands^{48/} and to the Department of Transportation if it will be within the ocean shore area^{49/}. The procedure is similar to that described above for leases and construction permits.

The construction and operation of a processing plant port facility will also affect air quality in the area. Each of the types of port facilities described in the technical section of the report will involve the construction of a terminal building and a two-land access road, causing fugitive emissions of dust and particulates. Such emissions will be regulated by the State Air Quality Regulations, analysed in more detail in the section dealing with the processing plant. Further emissions will result from the operations of unloading, storing and reloading dry nodules for inland transport, assuming that the slurry pipeline option is not used. Reduction of such emissions by hooding, ventilation and other reasonable measures will have to be taken to prevent or alleviate "nuisance

conditions" under state law ^{50/}.

II. PORT TO PLANT TRANSPORTATION

The construction and operation of a slurry pipeline or conveyor system on State land requires a permit from the Highway Division of the Department of Transportation ^{51/}. An approach road to the plant also requires a permit from the Division. ^{52/}

Pipelines and conveyors will generate particulate emissions during construction, and the latter during operation as well; these will be subject to the hooding and venting regulations referred to above. ^{53/} The use of trucks will require compliance with motor vehicle emission requirements but rail transportation is generally not subject to regulation.

III. THE PROCESSING PLANT

The major areas of regulatory concern in the construction and operation of a processing plant relate to the large volume of water required in the process and air quality concerns in both the construction and operation phases. It is assumed in the technical section that noise levels are likely to be in the 47 to 67 decibel range, equivalent to that generated by light to heavy traffic on a highway; noise levels will not be a major problem, therefore. The disposal and discharge of solid and liquid wastes, including surface runoff, will be discussed in the section dealing with waste disposal.

The Regulation of Air Quality under Federal and State Law.

The major provisions of the Federal Clean Air Act of 1970, as amended,^{54/} have been outlined in the section of the progress report on federal regulation. Under these provisions, the Environmental Protection Agency was authorized to promulgate and enforce national ambient air quality standards (NAAQS), and new source performance standards (NSPS) for specific industrial categories; primary enforcement authority for achieving and maintaining these standards was to be delegated to an appropriate agency in each state, upon the submission and approval of a State Implementation Plan (SIP) conforming to federal requirements. Large portions of the Oregon plan were duly submitted and approved, and primary enforcement power for air quality in Oregon is now vested in the Department of Environmental Quality (DEQ).

However, the 1977 amendments to the Clean Air Act required the submission of revised SIPs, to be approved by the EPA before July 1, 1979. Revisions were to include regulations for the prevention of significant deterioration (PSD) of air quality in areas with levels higher than NAAQS,

^{54/} 42 U.S.C. §§7401-7642

and stringent permit requirements for the construction of new sources in nonattainment areas, where these standards are not being met. Failure to obtain approval of revised SIPs by the July 1 deadline was to result in a prohibition on the issue of new source construction permits in nonattainment areas after that date. Oregon submitted its revised plan in advance of the deadline, and does not expect approval until late in 1979; however, the EPA, in recognition of good faith efforts to comply with federal requirements, has granted interim authority to the DEQ to continue issuing new source construction permits, provided no actual construction takes place thereunder before final SIP approval is obtained.^{55/} The EPA will also continue to administer the Oregon PSD program until the State's PSD regulations receive final approval.

In addition to the federal controls outlined above, Oregon has its own state laws, standards and regulations governing air quality. The Oregon Clean Air Act^{56/} authorizes the promulgation by the State Environmental

^{55/} EPA Memorandum ANR 443 "Impact of Clean Air Act Nonattainment Sanctions" reprinted in Environment Reporter, June 15, 1979 at 225.

^{56/} ORS 468.

Quality Commission of regulations and standards often more stringent than federal requirements;^{57/} the DEQ has primary enforcement authority for these standards and regulations.^{58/} Provision also exists for Regional Air Pollution Authorities to serve areas with special air quality needs.^{59/} Only one such authority, the Lane County Regional Air Pollution Authority presently exists; a semi-autonomous body, it promulgates regional standards and regulations subject to the approval of the Environmental Quality Commission, and has exclusive jurisdiction over air quality in its own region. It is unlikely that the manganese nodule processing plant or any related facility will be sited within the jurisdiction of this authority.

This major facility will be subject to regulation of its design, construction, and operation under both state and federal law. If sited in a nonattainment area, its potential emissions of over 100 tons per year of sulfur

^{57/} ORS 468.295.

^{58/} ORS 468.020.

^{59/} ORS 468.500.

dioxide will make it a major new source subject to preconstruction review by the DEQ under the 1977 amendments to the Clean Air Act;^{60/} it will also fall within the EPA definition of a major new source^{61/} for the purpose of PSD requirements, which include preconstruction review and the use of best available control technology (BACT) to reduce emissions. The major air quality impacts of the plant to which specific standards will apply are outlined below:

(a) Equipment and facilities likely to be affected by design requirements include boilers; cooling towers; incinerators and smokestack; chemical process areas; chemical storage tanks and cooling towers.

(b) Construction of the plant will lead to fugitive emissions of dust and particulates which will be regulated as described above with reference to port facility construction.—

^{60/} 44 F.R. 3284 (1979).

^{61/} Note, however, the recent decision of the U.S. Court of Appeals for the District of Columbia, on June 18, 1979, which invalidated this EPA definition, together with other major provisions of the PSD regulations, leaving the future of the PSD program in some doubt (Alabama Power Co. v. Costle, No. 78-10006).

(c) The plant is to be primarily coal-powered; state regulations governing the sulfur content of fuels will therefore apply.^{62/} The burning of coal leads to emissions of sulfur dioxide, for which there are ambient air quality standards to be observed,^{63/} and photochemical oxidants, which react with the air to form "smog". These substances are subject to limited regulation in Oregon, since ambient air quality standards for photochemical oxidants are violated only in the summer months and much of the state is considered to be in attainment with the standards. Sources locating in "clean" areas are therefore exempt from the rules, which provide for compliance with the lowest achievable emission rate (LAER) as defined in the regulations^{64/} by requiring preconstruction approval and equipment modifications.

(d) The extraction of metals from manganese nodules can be accomplished using five different processes, each of which will release significant gaseous emissions into the atmosphere. The compositions of gaseous emissions for each process are summarized in the technical section of

^{62/} OAR 340-22-020.

^{63/} OAR 340-31-020.

^{64/} OAR 340-25-525.

the progress report, which shows the total volume of gases emitted from the main stack and from various stages of the process. In each process, the same gases are emitted: oxygen, nitrogen, ammonia, carbon monoxide, carbon dioxide, methane, hydrogen, water, hydrogen sulfide, and sulfur dioxide. Only the volumes and compositions vary from process to process. National ambient air quality standards for all regulated pollutants, and state standards for sulfur dioxide^{65/} and carbon monoxide^{66/} will apply to these emissions, and to additional emissions which may result from leakage from chemical holding tanks and from high temperature processes. The extent of emissions from these sources cannot be accurately predicted at this time.

(e) The manganese nodules to be processed contain lead, beryllium and mercury, all of which are classified as hazardous air pollutants under federal law.^{67/} If there is a potential for emission of these pollutants during any process or from any source, state emission standards will

^{65/} Note 63 supra.

^{66/} OAR 340-31-025.

^{67/} 40 C.F.R. 61.

apply for mercury^{68/} and beryllium;^{69/} only the ambient air quality standard will have to be observed for lead^{70/} which is not regulated by emission standards in Oregon.

(f) Finally, the plant may fall within the definition of an "indirect source" of gaseous emissions under Oregon regulations^{71/} as it provides parking for 500 employee cars, and may be regulated accordingly.

The Permit Process

A project of the size and complexity of a manganese nodule processing plant falls within several categories of air contaminant sources regulated under state and federal

^{68/} OAR 340-25-480.

^{69/} OAR 340-25-470.

^{70/} OAR 340-31-055.

^{71/} OAR 340-20-110.

law, and may therefore require a variety of permits for construction and operation. Permit requirements will vary according to the area in which the plant is likely to have a significant impact on air quality.

1. Federal Permit Requirements

(a) Preconstruction Review Rules for PSD Areas.

Since the revised SIP incorporating Oregon's proposed PSD rules has not yet received EPA approval, the EPA retains regulatory authority over new sources which have a potential air quality impact in areas where all NAAQS are being met. It has been established that the processing plant probably will fall within the current EPA definition of a major new source to be constructed after March, 1979.^{72/} If the plant will impact on a PSD area, it will be required to follow the permit procedure described below:

(i) Submission of information - the EPA requires the submission of information on ambient air quality standards in the affected area. This information must include an analysis of continuing air quality monitoring data for every pollutant to be emitted by the source for which a NAAQS exists, for the year preceding the permit application, unless the applicant can show that data

^{72/} Notes 60 and 61 supra and accompanying text.

from a representative period in that year or another year, will suffice.^{73/}

The applicant is further required to submit detailed information on the design, native location and typical operating schedule of the source, together with a detailed construction schedule, and a detailed description of a continuous emission reduction system under the BACT requirements. The EPA may also require information on the air quality impacts of such a source and on other growth in the same area.^{74/} More stringent requirements exist for sources impacting designated Class I areas.^{75/}

(ii) Public notice and participation - the administrator of the EPA has one year to make the final determination on the permit application; during that time he is required to make available in the affected area a copy of all materials submitted by the applicant and any other relevant materials; notify the public and all agencies affected as to the permit application and provide opportunities for oral and written comment at a public hearing;

^{73/} 40 C.F.R. 51.24(n).

^{74/} Id. at para. (o).

^{75/} Id. at para. (q).

and consider all oral and written comments received in the making of a final determination. The notification of the final decision should be available to public scrutiny.^{76/}

It should be noted that construction approval thus obtained will not relieve the applicant of the responsibility to comply fully with the PSD requirements and other state and federal requirements.

It should be noted further that although the EPA is currently exercising only an interim authority over PSD permit applications, the new PSD regulations published by the Oregon DEQ in its revised SIP, which will come into effect on the final approval of the plan, will be at least as stringent as, if not more stringent than, existing requirements.

Preconstruction Review Rules and Permit Procedures
for Nonattainment Areas.

Pending the approval of its revised SIP, the DEQ will continue to issue permits for the construction of new sources in nonattainment areas. Such permits will be issued for "major sources", a definition which probably covers the manganese nodule processing plant,^{77/} subject

^{76/} Id. at para. (r).

^{77/} OAR 340-20-191(3).

to review of the proposed source by the DEQ to determine whether the source will meet all applicable emission requirements in the SIP, any applicable new source performance standard promulgated by the EPA in 40 C.F.R. part 60, or any national emission standard for hazardous air pollutants in 40 C.F.R. part 61. Noncompliance with any of the above standards will result in denial of the permit.^{78/} In addition, air quality impacts contributing to a violation of NAAQS must be assessed, and if such a violation exists, the DEQ will grant approval for construction only if the following conditions are met:^{79/} (a) the achievement of LAER; (b) emission offsets obtained from existing sources in the area of the proposed source. (Interpollutant offsets are unacceptable); (c) demonstration by the operator that all major stationary sources owned or operated by him in the State of Oregon are in compliance or on a compliance schedule with applicable requirements of the state plan.

The permit for construction and operation of a major new source in a nonattainment area will be issued

^{78/} OAR 340-25-535.

^{79/} OAR 340-20-193.

subject to uniform procedures for obtaining permits from the DEQ,^{80/} as described below.

Applications must be submitted at least sixty days before the permit is required, on a form issued by the DEQ. All applications must be signed and completed by the applicant and accompanied by a specified number of copies of the exhibits required for the particular permit sought. This information will be reviewed by the DEQ within fifteen days of submission to determine its adequacy: further information, if requested, must be submitted within ninety days or the application will be deemed withdrawn. When the information submitted is deemed adequate the applicant will be notified that the application is ready for processing, which must be completed within forty-five days after such notification.^{81/} Should this time period prove insufficient for the DEQ to complete permit procedures, a conditional or temporary permit shall be deemed to have been issued to the applicant, subject to stringent limitations on activities under the permit which might violate any laws, rules, or regulations of the DEQ.^{82/}

^{80/} OAR 340-14-005.

^{81/} OAR 340-14-020.

^{82/} Id.

While the application is being reviewed by the DEQ, provisions exist for communication between the DEQ and the applicant regarding proposed permit provisions prepared by the DEQ; comments by the applicant upon the proposed provisions must be submitted to the DEQ within fourteen days of their being mailed to the applicant. In making a final determination on the provisions, the DEQ must take such comments into account. Upon final notification of the applicant by the DEQ as to issuance or denial of a permit, the applicant has twenty days to request a hearing before the Environmental Quality Commission if he is dissatisfied with the DEQ's decision; if no such request is made the decision will become final at the end of the twenty-day period.^{83/}

Further provisions exist for the modification, suspension or revocation of permits issued under these regulations.

2. State Permit Requirements and Procedures.

(a) Air Contaminant Discharge Permits. In addition to the permits required under the Federal Clean Air Act of 1970, as amended, for major new sources impacting on

^{83/} OAR 340-14-025.

the air quality of PSD areas or nonattainment areas, a statewide requirement exists for the issuance of air contaminant discharge permits under the Oregon Clean Air Act, for certain specific industrial categories of stationary sources.^{84/} The processing plant as a whole would probably fall into at least one of these categories, as a "new source . . . with potential to emit ten or more tons per year of any air contaminants including, but not limited to, particulates, SO₂, NO₂ and hydrocarbons, if the source were to operate uncontrolled;"^{85/} in addition, several component parts of the plant facilities such as fuel burning equipment, may be regarded in themselves as "air contaminant sources" falling within the permit requirements: in such a case, a multiple source application will be required, covering all sources located at one site.^{86/}

The permit procedure is initiated by the applicant's submission of a completed application on forms provided by the DEQ, containing information as to the nature of the business; a description of the production process; a plot plan showing the location of all contaminant sources

^{84/} OAR 340-20-155.

^{85/} Id., and Table A appended thereto.

^{86/} OAR 340-20-160.

and the nearest residential or commercial property; the type and quantity of fuels used; the amount, nature and duration of emissions; and the estimated efficiency of air pollution control equipment. Concurrently with the permit application, the source operator is required to file a notice of construction with the DEQ, together with detailed plans and specifications for the construction of such sources.^{87/}

The permit procedure will then follow the pattern outlined above, with the same time limitations, notice requirements and opportunity for a hearing.^{88/}

It should be noted that specific rules govern the approval of new air contaminant sources in nonattainment areas in Oregon;^{89/} also, while the Lane Regional Air Pollution Control Authority is authorized to issue, modify, renew, suspend and revoke air contaminant discharge permits for air contaminant sources with its jurisdiction, such authority is subject to the approval of the DEQ, which must review all proposed issuance or modification of permits by

^{87/} OAR 340-20-175.

^{88/} Notes 80 to 83 above and accompanying text.

^{89/} OAR 340-20-190 to OAR 340-20-197.

the Regional Authority at least thirty days prior to the proposed issuance date.^{90/}

(b) Indirect Source Permits - Oregon state law provides for the regulation of construction of stationary sources which operate as an indirect cause of mobile source activity that results in emissions of an air contaminant for which there is a state standard.^{91/} The technical section of the progress report suggests that the processing plant will require parking facilities for a maximum of 500 employee cars: this is sufficient to characterize the plant as an indirect source, if it is to be sited in any of the following areas:^{92/}

(i) within 5 miles of the municipal boundaries of a municipality with a population of 50,000 or more;

(ii) in Clackamas, Lane, Marion, Multnomah or Washington Counties.

A completed permit application form must be submitted to the DEQ or Regional Authority, together with a

^{90/} OAR 340-20-185.

^{91/} OAR 340-20-110.

^{92/} OAR 340-20-115(2)(a).

map and description of the site; a site plan showing the location of parking spaces; a ventilation plan for subsurface and enclosed parking; a written statement from the appropriate planning agency that the proposed source is consistent with an approved Parking and Traffic Circulation Plan^{93/} for the region; and a reasonable estimate of the effect the project has on total parking.^{94/}

The permit process will operate as detailed in the section on nonattainment areas above.^{95/} Within twenty days of receipt of the application, the DEQ shall issue a twenty-day notice, notify the general public and any specific interested parties, and make available for public review and comment, information on the proposed project, the DEQ's evaluation of the project, and the proposed decision.^{96/} Within sixty days the DEQ must act to either approve or deny the issuance of a permit.^{97/} Provision is made for

^{93/} To be established by DEQ pursuant to OAR 340-20-120.

^{94/} OAR 340-20-125.

^{95/} Notes .80 to 83 and accompanying text.

^{96/} OAR 340-20-130(2).

^{97/} Id. at (3).

conditional approval of permits, and for issuance of permits of limited duration.^{98/}

(c) The One-Stop Permit Process. The preceding paragraphs have attempted to outline the application of permit requirements and procedures under state and federal air quality laws which might be applicable to various aspects of the project. The considerable differences in the lead times involved for various permits and the potential for duplication of effort in submitting the same information to different agencies at different stages of project development, has rendered the permit process complex and confusing to operators of sources requiring multiple permits. To alleviate this problem, the DEQ has instituted a master application procedure, whereunder the applicant first completes a master application form with all relevant information on the proposed project. This is submitted to the DEQ, which sends copies to all affected state regulatory agencies; within thirty days the applicant will receive all necessary permit application forms, and will work individually with each agency thereafter. The DEQ will continue to act as a coordinator of permit procedures if necessary, and

^{98/} OAR 340-20-135.

may arrange for conferences between the applicant and each or all agencies involved to clarify any questions arising with respect to permit requirements as procedures. The DEQ may also intercede where interagency conflicts or timing problems arise. Where public hearings are required for more than one permit, it can arrange that all relevant matters be dealt with at a single hearing.

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Water Appropriation

The water needs of the processing plant will most likely be met by purchase from the local or regional water district. However, there are water supply problems in some areas of the State, for example in Coos Bay, and thus it would be necessary to investigate the water supply of a prospective site and discuss the plant's needs with the Director of the Water Resources Department. In the event that purchase of water is not feasible a permit to appropriate water must be obtained from the DOE. A brief discussion of the permit procedure follows. It should be noted that this permit would be covered by the Master Application procedure.

A Permit to Appropriate Water must be obtain from the Water Resources Director in order for any surface waters of the State of Oregon to be appropriated. ORS 537.130. The application submitted to the Director must include "the source of the water supply, the nature and amount of the proposed use, the location and description of the proposed ditch, canal or other work, the time within which it proposed to begin construction, the time required for completion of the construction, and the time for the complete application of the water to the proposed use." ORS 537.140(1)(a).

If the application is considered to be "for mining purposes," the applicant must also provide "the nature of the mines to be served and the methods of supplying and utilizing the water." ORS 537.140(1)(f). Maps, drawings and other data concerning the proposed project and the applicant's ability and willingness to construct it must also be submitted. ORS 537.140(2). If more than one use is contemplated, that fact must be stated on the application. OAR 690-20-005. A fee of \$20.00 must accompany the application. ORS 536.050(1).

The Director is statutorily instructed to approve the application if he finds the appropriation to be one for beneficial use, ORS 537.160(1), subject to the following conditions:

(1) If the applicant is not using his own waterway to carry the appropriated water, he must present the Director with evidence of the waterway owner's consent. ORS 537.160(2).

(2) If over 10 cubic feet per second of flow is contemplated, the Director must pay special attention to the ability of the applicant to construct the project. ORS 537.160(3).

If the Director believes the proposed use may "prejudicially affect the public interest, " the law requires

that a public hearing be held by the Water Policy Review Board. ORS 537.170(1). If, after that hearing, the Board determines that the proposed use "would impair or be detrimental to the public interest," it must reject the application or require its modification "to conform to the public interest, to the end that the highest public benefit may result from the use to which the water is applied." ORS 537.170(2).

Once the Director is satisfied that an appropriation has been appropriated in accordance with the provisions of the Water Rights Act (defined at ORS 537.010 to mean most statutes dealing with the appropriation and beneficial use of water), he issues a certificate to that effect. ORS 537.250(1). "No application will be approved and permit issued until expiration of at least 30 days from date of filing in Water Resources Department except in cases where special circumstances justify such action." OAR 690-20-015. The right to appropriate water that is granted by the certificate "shall continue in the owner thereof so long as the water shall be applied to a beneficial use under and in accordance with the terms of the certificate." ORS 537.250(2). A permit may be cancelled under the following conditions:

(1) Whenever the permit owner fails to commence actual construction within the time required by law.

(2) Whenever the permit owner, having begun construction, "fails or neglects to prosecute work thereon with reasonable diligence, or fails to complete the construction work within the time required by law, or is fixed in the permit."

(3) Whenever the permit owner, having completed construction, "fails or neglects to apply the water to beneficial use within the time fixed in the permit."

ORS 537.410(1). Public notice of the cancellation must be given and public hearings held prior to any cancellation.

ORS 537.420, 537.445.

IV. WASTE DISPOSAL

The technical section of the report assumes that all process liquid and solid wastes, including plant runoff, will be combined with tailings and granulated slag into one waste stream. Waste treatment methods envisaged involve precipitation of soluble toxic elements and disposal of the remaining solid waste in either tailings ponds or landfills, or by dumping at sea. No direct discharge of liquid wastes into public waters is envisaged. However, due to the unfavorable precipitation conditions on the Pacific coast, or possible lack of available land, it may not be feasible to use the tailings ponds or landfill methods and treatment and discharge of liquid wastes may have to be considered. In this case the federal and state regulations concerning discharge of wastes will apply. The pertinent regulations will therefore be discussed prior to the analysis of the regulations applicable to solid waste disposal.

A. Statewide Planning Goal 6

This Goal, entitled "Air, Water and Land Resources Quality," provides in its general statement as follows:

"All waste and discharge from future development, when combined with such discharges from existing developments shall not threaten to violate, or violate applicable state or federal environmental quality statutes, rules and standards with respect to the air, water and land resources of the applicable air sheds and river basins described or included in the state environmental quality statutes, rules, standards and implementation plan, such discharges shall not

(1) Exceed the carrying capacity of such resources, considering long range needs;

(2) Degrade such resources; or

(3) Threaten the availability of such resources."

The Planning Guidelines for this Goal indicate that plans should "buffer and separate those land uses which create or lead to conflicting requirements and impacts on the air, water and land resources," and "should consider as a major determinant the carrying capacity of the air, land, and water resources of the planning area."

B. Liquid Wastes

1. Introduction

State law contains this general prohibition against water pollution:

"Except as provided in ORS 468.740, no person shall:

(a) Cause pollution of any waters of the state or place any wastes in a location where such wastes are likely to escape or be carried into the waters of the state by any means.

(b) Discharge any wastes into the waters of the state if the discharge reduces the quality of such waters below the water quality standards established by rules for such waters by the commission."

ORS 468.720(1). Violation of this subsection is a public nuisance. ORS 468.720(3).

The Environmental Quality Commission, a five-member board appointed by the governor to establish policies for the operation of the Department of Environmental Quality (ORS 468.010, 468.015), is empowered to establish effluent limitations (as that term is defined in the Federal Water Pollution Control Act of 1972, hereinafter FWPCA) and other minimum requirements for waste disposal, maintenance of disposal systems, "and all other matters pertaining to standards of quality for the waters of the state." In addition, the Commission is the state body charged with enforcement of the FWPCA and its empowering regulations. ORS 468.725, 468.730. The Commission may also establish by rule general standards of water quality and purity, taking into consideration the following factors:

"(a) The extent, if any, to which floating solids may be permitted in the water;

(b) The extent, if any, to which suspended solids, settleable solids, colloids or a combination of solids with other substances suspended in water may be permitted;

(c) The extent, if any, to which organisms of the coliform group, and other bacteriological organisms or virus may be permitted in the waters;

(d) The extent of the oxygen demand which may be permitted in the receiving waters;

(e) The minimum dissolved oxygen content of the waters that shall be maintained;

(f) The limits of other physical, chemical, biological or radiological properties that may be necessary for preserving the quality and purity of the waters of the state;

(g) The extent to which any substance must be excluded from waters for the protection and preservation of public health; and

(h) The value of stability and the public's right to rely upon standards as adopted for a reasonable period of time to permit institutions, municipalities, commerce, industries and others to plan, schedule, finance and operate improvements in an orderly and practical manner."

ORS 468.735(1).

2. NPDES Waste Discharge Permit

"Without first obtaining a permit from the director [of the Department of Environmental Resources], which permit shall specify applicable effluent limitations and shall not exceed five years in duration, no person shall:

(1) Discharge any wastes into the waters of the state from any industrial or commercial establishment or activity or any disposal system.

(2) Construct, install, modify or operate any disposal system or part thereof or any extension or addition thereto.

(3) Increase in volume or strength any wastes in excess of the permissive discharges specified under an existing permit.

(4) Construct, install, operate or conduct any industrial, commercial or other establishment or activity or any extension or modification thereof or addition thereto, the operation or conduct of which would cause an increase in the discharge of wastes into the waters of the state or which would otherwise alter the physical, chemical or biological properties of any waters of the state in any manner not already lawfully authorized.

(5) Construct or use any new outlet for the discharge of any wastes into the waters of the state."

ORS 468.740.

Any person who holds a valid National Pollutant Discharge Elimination System (NPDES) permit is considered to be in compliance with these requirements, with no additional permit required. OAR 340-45-015(3). Those required to obtain an NPDES permit from the Director include any person who wishes to "discharge pollutants from a point source into navigable waters." OAR 340-45-015(2). The terms "pollutants," "point source," and "navigable waters" are defined in Section 340-45-010 of the Oregon Administrative Rules; these definitions generally follow those presented in FWPCA. 33 U.S.C. § 1362.

To obtain an NPDES permit, an application must be submitted at least 180 days before the discharge is to begin. OAR 340-45-030(1). An application which has been filed with the U.S. Army Corps of Engineers in accordance with Section 13 of the Federal Refuse Act, or an NPDES application which has been filed with EPA, will be accepted as an application for purposes of an NPDES permit from Oregon provided that the application is complete and its information current. OAR 340-45-030(5).

Following a determination that the application is complete, each application is reviewed on its own merits. OAR 340-45-035(1). The Department of Environmental Quality then prepares a tentative determination to issue or deny an NPDES permit for the discharge described in the application. If the determination is to issue the permit, a proposed permit is drafted which includes effluent limitations, a proposed schedule of compliance (if necessary) established in conformance with FWPCA and regulations issued pursuant thereto, and any special conditions the Department wishes to include. OAR 340-45-035(2). Public notice of the proposed permit must be given and a 30-day period allowed for interested persons to submit views and comments. "All comments submitted shall be considered in the formulation of a final determination." OAR 340-45-035(3). If over 500,000 gallons

of waste are to be discharged on any day of the year, the Department must prepare a "fact sheet" concerning the proposed discharge. This fact sheet must include a sketch or description of the location of the discharge; the rate or frequency of the discharge; the tentative determination as to whether an NPDES permit will be issued or denied; an identification of the receiving stream with respect to beneficial uses, water quality standards, and effluent limitations; a description of the procedures to be followed for finalizing the permit; and a description of procedures by which public participation will occur. OAR 340-45-035(4).

After the public notice has been drafted and the fact sheet and proposed permit provisions prepared, the Department forwards them to the applicant for a 14-day review and comment period. OAR 340-45-035(5). After that period has ended, the public notice and fact sheet are sent to any person upon request, to the Regional Administrator of EPA, and to any other states whose waters might be affected by the proposed discharge. OAR 340-45-035(6); 33 U.S.C. §§ 1342(b)(3),(4),(5). The Director must provide an opportunity for the applicant, any affected state, or any interested agency or person to request a public hearing with respect to an NPDES application. Such a hearing will be held "if the Director determines that useful information

will be produced thereby, or if there is significant public interest" in so doing. Public notice of such a hearing must be provided. OAR 340-45-035(7).

After the public involvement period described above, the Director makes a final determination whether to issue or deny the NPDES permit, notifying the applicant in writing of the decision. OAR 340-45-035(8). If he decides to deny the permit, the Director must notify the applicant of that decision by registered or certified mail and provide reasons for the decision. A rejected applicant then has 20 days in which to request a hearing before the Environmental Quality Commission, stating in his request the grounds for the necessity of the hearing. OAR 340-45-050.

If the Director decides to issue the permit, he must attach "such pertinent and special conditions as may be required to comply with the Federal [Water Pollution Control] Act or regulations issued pursuant thereto." OAR 340-45-035(8). If any conditions of the permit issued differ from the proposed revisions forwarded to the applicant for review, the notification of the decision to issue must include the reasons for the changes made. Id. If the applicant is dissatisfied with the conditions or limitations of any NPDES permit issued by the Director, he may, within 20 days of the mailing of the notification of issuance of

the permit, request a hearing before the Environmental Quality Commission. OAR 340-45-035(9).

It should be noted that if the Director issues a permit which applies effluent limitations in accordance with effluent guidelines rather than water quality standards, he must determine that the permitted discharge will not violate applicable water quality standards and provide support for that determination. Such support must include "a description of the anticipated effect on water quality at the mixing zone boundary of the chemical and/or physical parameter(s) upon which the size and shape of the mixing zone are based" and "a statement of anticipated effect of the discharge on aquatic life." OAR 340-45-035(8).

As indicated above, the maximum length of time for which an NPDES permit can be valid is five years. The procedures for renewal of the permit or modification requested by the permittee are identical to those used for the original issuance. OAR 340-45-040. No permit may be transferred without prior written approval from the Director, who must ensure that the party acquiring the permit agrees in writing to fully comply with its provisions. OAR 340-45-045.

If it becomes necessary for the Director to suspend or revoke an NPDES permit due to noncompliance with

its terms, unapproved changes in operation, false information submitted in the application, or any other cause, he must notify the permittee of his intent to do so including in the notification the reasons therefor. The suspension or revocation becomes effective 20 days from the date of mailing of the notice unless within that time the permittee requests a hearing before the Environmental Quality Commission. OAR 340-45-060(1). The Department may, if it "finds that there is a serious danger to the public health or safety or that irreparable damage to a resource will occur," suspend or revoke an NPDES permit effective immediately. The Department must notify the permittee of the action and that he has 90 days within which to request a hearing. OAR 340-45-060(2).

Persons required to have an NPDES permit are subject to a three-part fee consisting of a nonrefundable uniform filing fee, an application processing fee, and an annual compliance determination fee. An amount equal to the first two fees plus one year's compliance determination fee must be submitted with any application for a new NPDES permit. According to Table B accompanying OAR 340-45-070, fees for a plant of the type proposed are \$25.00 for the filing fee and \$150.00 for the application processing fee. The table sets annual compliance fees by the type of operation to take place; if more than two fees apply, only the

highest need be paid. Potentially applicable fees are as follows:

Primary smelting and/or refining of ferrous and nonferrous metals utilizing sand chlorination separation facilities -- \$950.00

Not using such separation facilities -- \$450.00

Plants with cooling water discharge of over 20,000 BTU per second -- \$450.00.

3. Water Pollution Control Facilities (WPCF)

Permit

If an NPDES permit is not required (i.e., if discharges are to be made to non-navigable waters), a State Water Pollution Control Facilities (WPCF) permit must nonetheless be obtained. ORS 468.740; OAR 340-14-007; 340-45-025. WPCF permits are issued by the Department of Environmental Quality and must specify "those activities, operations, emissions and discharges which are permitted as well as the requirements, limitations and conditions which must be met." OAR 340-14-015(1). Their duration is variable but in any case may not exceed ten years. OAR 340-14-015(2).

An application for a WPCF permit must be submitted at least 60 days before it is needed. OAR 340-14-020(1). Once the Department is satisfied that all pertinent information accompanies the application, it reviews the application

on its own merits. OAR 340-14-025(1). Proposed provisions of the permit are prepared by the Department and forwarded to "the applicant and other interested persons at the discretion of the department" for comment. OAR 340-14-025(2). A 14-day comment period is allowed, after which time the Department may take final action on the permit. OAR 340-14-025(3). As with NPDES permits, in reaching its decision the Department must consider the comments received "and any other information obtained which may be pertinent to the application being considered." Id.

The Department must notify the applicant in writing of the final action taken on the application. OAR 340-14-025(4). If a decision is made to deny the permit, the Department notifies the applicant of that fact and the reasons for the decision. As with NPDES permits, the rejected applicant then has 20 days to request a hearing before the Environmental Quality Commission, stating in his request the grounds for the necessity for the hearing. OAR 340-14-035.

If the Department decides to issue a permit that contains any conditions that are different from the proposed provisions forwarded to the applicant for review, the notification of issuance will contain the reasons for the changes. OAR 340-14-025(4). The applicant is given 20 days

to request a hearing before the Environmental Quality Commission to present any dissatisfaction with the permit issued. OAR 340-14-025(5).

The procedure for renewal of the WPCF permit is the same as that described above for an NPDES permit. OAR 340-14-030. Permits are automatically terminated

"(a) Within 60 days after sale or exchange of the activity or facility which requires a permit.

(b) Upon change in the nature of activities, operations, emissions or discharges from those of record in the last application.

(c) Upon issuance of a new, renewal or modified permit for the same operation.

(d) Upon written request of the permittee."

OAR 340-14-015(3). Provisions applicable to the suspension or revocation of an NPDES permit by the Director of the Department also apply to similar actions taken by the Department in regard to a WPCF permit. OAR 340-14-045.

The same fee schedule applies to WPCF and NPDES permits. OAR 340-45-070(1).

C. Solid Wastes

1. Distribution of Governmental Authority

(a) Powers and Duties of the State Department of Environmental Quality

Subject to policy direction by the Environmental Quality Commission, this Department promotes and coordinates research on solid waste management techniques, receives funds from public and private agencies to carry out such research, and may enter into agreements with the Federal Government, state agencies, local governmental units and private persons to implement solid waste management plans in Oregon. ORS 459.025. In addition, the Department provides "advisory technical and planning systems in development and implementation of effective solid waste plans and practices". ORS 459.035. Finally, it considers and acts upon applications for permits to dispose of solid wastes, described in greater detail below.

(b) Powers and Duties of the State Environmental Quality Commission

It is the duty of this Commission to adopt "reasonable and necessary solid waste management rules," such as those governing the accumulation, storage, collection, transportation and disposal of solid wastes, determining the location of proper disposal sites, and so on. Specific examples of such rules that may affect proposed plans are discussed below. It should also be noted that the Commission is empowered to adopt rules with a limited application in certain areas of the state if special conditions prevail

in those areas. Such conditions would include climate, population characteristics, and the costs of solid waste management. ORS 459.045.

(c) Powers of Local Government Units

State law empowers counties and cities to acquire property for solid waste disposal sites, ORS 459.075, provide for the collection of solid wastes in the local area, ORS 459.085(1), and tax residents for the provision of such services, ORS 459.085(2), (3). Any ordinance, order, regulation or contract adopted by a local government unit that affects solid or liquid waste disposal must comply with regulations promulgated by the Environmental Quality Commission or with the solid waste management plan adopted by a metropolitan service district and approved by the Department. ORS 459.095(1). A local government unit may adopt regulations as to disposal sites that it owns or operates including the volume or type of solid wastes that will be received and what type of person may use the site. ORS 459.105.

The state has also given its counties the authority to regulate waste disposal on private property as a private nuisance. ORS 459.120. The Board of Commissioners in any county may enact ordinances that:

"(1) Prohibit the deposit, accumulation, storage, collection, maintenance or display on private property of waste or solid waste that is hazardous to the health and safety of the public; or which creates offensive odors or a condition of unsightliness.

(2) Provide for abatement of such offenses, hazards or unsightly conditions as a public nuisance."

Id. Applicable county ordinances of this type should be checked to determine their impact upon the disposal of solid waste from the proposed manganese nodule processing plant.

2. Definition

"Solid waste" is defined by Oregon law to mean

"All putrescible and non-putrescible wastes, including but not limited to garbage, rubbish, refuse, ashes, waste paper and cardboard; sewage sludge, septic tank and cesspool pumpings or other sludge; commercial, industrial, demolition and construction wastes; discarded or abandoned vehicles or parts thereof; discarded home and industrial appliances; manure; vegetable or animal solid and semisolid wastes, dead animals and other wastes."

ORS 459.005(11); OAR 340-61-010(22). The term does not include hazardous wastes as defined in ORS 459.410(6)

(see Part IV-D

"Waste" is defined as meaning "useless or discarded material." ORS 459.005(14); OAR 340-61-010(24).

3. Storage and Collection

The storage and collection of all solid waste must be "conducted in a manner to prevent:

- (a) Vector production and sustenance.
- (b) Conditions for transmission of diseases to man or animals.
- (c) Hazards to service or disposal workers or the public.
- (d) Air pollution.
- (e) Water pollution or allow escape of solid wastes or contaminated waters to public waters.
- (f) Objectionable odors, dust, unsightliness, aesthetically objectionable conditions or other nuisance conditions."

OAR 340-61-070(1). In addition, the storage of industrial solid wastes in open storage areas "shall not be closer than 100 feet horizontal distance from the normal high water mark of any public waters unless special provision is made which prevents wastes, or drainage therefrom, from entering public waters." OAR 340-61-070 (5)(a). "Public waters" is defined to include:

"Lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or stale, public or private (except those private waters which do not combine or

affect the junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction."

OAR 340-61-010(17).

4. Transportation

If any collection or transfer vehicles are used in the disposal of solid waste from the plant, they must be "constructed, loaded and operated so as to prevent dropping, leaking, sifting, or blowing or other excape ment of solid waste from the vehicle." OAR 340-61-075(1)(a). If such a vehicle is carrying a load that is "likely to blow or fall," it must have a cover over the waste material that is used in transit. OAR 340-62-075(1)(b). The vehicles must be cleaned at least once weekly and the waste water therefrom must be disposed of in a manner approved by the Department of Environmental Quality or the state or local health department having jurisdiction. OAR 340-61-075(2),(3).

The transportation of solid waste from the plant may involve temporary storage at a "transfer station," i.e., "a fixed or mobile facility, normally used as an adjunct of a solid waste collection and disposal system or resource recovery system, between the collection route and disposal site . . ." Examples of such a facility given in the statute are "a large hopper, railroad gondola or barge."

ORS 459-005(13); OAR 340-61-010(23). There may be no discharge of waste water to public waters in the operation of a transfer station except in accordance with a waste discharge permit from the Department of Environmental Quality. OAR 340-61-065(2), 340-61-045(2)(d). The transfer station site must be designed to divert surface drainage around or away from its operational area. OAR 340-61-065(2), 340-61-045(2)(b). All solid waste deposited at the site must be confined to a designated dumping area and the accumulation of solid wastes kept to "minimum practicable quantities." OAR 340-61-065(2), 340-61-045(3)(a).

5. Disposal Site

No disposal site may be operated, maintained or substantially altered, expanded or improved, nor any change made in the method of type of disposal used at the site, without first obtaining a permit to do so from the Department of Environmental Quality. ORS 459-205; OAR 340-61-020(1). A disposal site is defined to mean:

"Land used for the disposal or handling of solid wastes, including but not limited to dumps, landfills, sludge lagoons, sludge treatment facilities, disposal sites or septic tank pumping or cesspool cleaning service, salvage sites, incinerators for solid waste delivered by the public or by solid waste collection service and composting plants; but the term does not include . . . a landfill site which is used by the

owner or person in control of the premises to dispose of soil, rock, concrete or other similar non-decomposable material, unless the site is used by the public either directly or through solid waste collection service."

ORS 459.005(4); OAR 340-61-010(6).

All applications for solid waste disposal sites must be filed, and permits issued, denied, modified or revoked in accordance with the procedures set forth for WPCF permits (see Part IV-B-3 supra). OAR 340-61-025(1). Applications are required to contain a description of the existing and proposed operation of and facilities at the site, "with detailed plans and specifications for any facilities to be constructed." Each application must also include a recommendation by the local governmental unit or units having jurisdiction and any other information the Department feels it needs to determine whether the proposed site, facilities, and operation will comply with applicable requirements. ORS 459.235. Local authorities whose recommendations are required include the local or state health agency having jurisdiction, "the governing body [of the county or municipality wherein the site would be located] and its regional state water advisory committee and the city or county planning commission having jurisdiction." OAR 340-61-025(2) (b),(c).

Applications must also be accompanied by a "feasibility study report," unless the requirements of such report have been met by submittal of a regional or county-wide plan or other submittals. OAR 340-61-025(3). The report must include a description of the area where the site will be located (including socioeconomic conditions in the area, climate, and topography), a statement of the existing disposal practice in the area "including types and quantities of wastes, methods of processing and disposal presently used," proof that the proposed site is part of or compatible with any applicable regional or county-wide solid waste management plan, maps and reports "to show graphically the location and nature of the proposed project" (including geographic characteristics of the area), a compilation of land use and zoning conditions in the vicinity of the proposed site, population projections, a proposed fiscal program for implementation of the plan, and "a proposal for protection and conservation of the air, water and land environment surrounding the disposal site, including control and/or treatment of leachate, prevention of traffic congestion and control of other discharges, emissions or activities which may result in a public health hazard, a public nuisance or environmental degradation." OAR 340-61-030. In addition, the report is required to contain a description of the

"Proposed method or methods to be used in processing and disposing of solid wastes, including anticipated types and quantities of solid wastes, justification of alternative disposal methods selected, general design criteria, ultimate use of land disposal site, equipment to be used, projected life of the site, and proposed administration of the program."

OAR 340-61-030(4).

Prior to the establishment, construction, maintenance or operation of a new disposal site, or the substantial alteration, expansion or modification of an existing one, final detailed plans for construction and operation of the proposed site must be submitted to and approved by the Department of Environmental Quality. OAR 340-61-035(1). A completed application for a solid waste disposal permit may be preliminarily reviewed by the Department and the Environmental Quality Commission prior to the preparation of such final detailed plans and specifications, if requested by the applicant or desired by the Department. OAR 340-61-035(3). "Plans and specifications submitted to the Department shall be sufficiently detailed and complete to ensure that the proposed disposal site and related facilities will be constructed and operated as intended and in compliance with all pertinent state and local air, water and solid waste statutes and regulations." OAR 340-61-035(4).

A series of special requirements apply to landfills and sludge disposal sites. Landfills include "the disposal of solid wastes by compaction in or upon land and cover of all wastes deposited with earth or other approved cover material." OAR 340-61-010(11), (12), (21).

"Sludge" is defined by the Rules in terms applicable to septic tank wastes and other sewage, and therefore does not denote the type of wastes to be discharged from the proposed plant. OAR 340-61-055(1).

If no local public hearing regarding the proposed disposal site has been held, the Department may, if it feels that there is sufficient public concern, require that such a hearing be held by the local government agency responsible for solid waste management "as a condition of receiving and acting upon an application." OAR 340-61-025(4).

If the disposal site meets all of the applicable requirements discussed above, the Department of Environmental Quality issues a permit. "Every completed application shall be approved or disapproved within 60 days after its receipt by the department." If no action is taken by that time the Commission may grant an extension upon a showing of good cause by the Department. If no extension is

granted, the application is considered approved. ORS 459.245(1). Permits are issued for a period not to exceed 10 years "to be determined by the department." ORS 459.245(2). A site must meet all applicable requirements to obtain renewal of the permit. ORS 459.245 (3). In addition, if at any time the Department decides that a site has fallen short of these requirements, the permit may be suspended or revoked in accordance with the procedures specified in ORS Chapter 183. ORS 459.255.

D. Hazardous Wastes

1. Definition

"Hazardous wastes" is defined as including:

"residues resulting from any process of industry, manufacturing, trade or business or from the development or recovery of any natural resources, if such residues are classified as hazardous by order of the commission after notice and public hearing. For purposes of such classification, the commission must find that such residue, because of its quantity, concentration, or physical, chemical or infectious characteristics may:

(A) Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(B) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed."

ORS 459.410(6)(b).

On May 25, 1979, the Oregon Environmental Quality Commission adopted new rules governing the administration of hazardous waste. OAR 340-63. Under these rules, a waste is classified as hazardous "if a representative sample of the waste meets the criteria of or is listed in the Part (B, covering classification of hazardous wastes)." Wastes listed are those described as ignitable, corrosive, reactive, toxic, carcinogenic, and empty containers "used in the transportation, storage, or use of a hazardous material or waste." OAR 340-63-130(1). A brief description of each type of waste follows.

- Ignitable - includes "any liquid that has a flash point less than 60° C; any flammable compressed gas, oxidizer or Class C explosive defined as ignitable under EPA Regulations on the same subject [49 C.F.R. Part 173], and "any other waste, that under conditions incident to its management, is liable to cause fires ... and when ignited burns so vigorously and persistently as to create a hazard during its management." OAR 340-63-110.
- Corrosive - having a pH of 2 or less or 12 or greater, or as defined as corrosive by 49 C.F.R. §173.240. OAR 340-63-115.
- Reactive - normally unstable waste that "readily undergoes violent chemical change such as reacting violently or forming potentially explosive mixtures with water" and "any waste that is capable of detonation or explosive reaction." OAR 340-63-120.
- Toxic - includes pesticides; pesticide manufacturing residues; halogenated hydrocarbons and phenols; "wastes containing cyanide, arsenic, cadmium or mercury ... if it contains 100 ppm or greater of such substance or 200 ppm or greater of the sum of such substances;" "waste containing hexavalent chromium or lead ... if it contains 500 ppm or greater of such substance or 1000 ppm or greater of the sum of such substance." OAR 340-63-125.

Of special importance is this language: "Mining wastes are exempt from the rules of this Division." OAR 340-53-125(3)(c). Whether such a general statement covers the wastes to be produced by a manganese nodule processing plant is uncertain; appropriate DEQ officials should be contacted to determine the scope of the provision.

Small amounts of hazardous waste need not be disposed of at a hazardous waste management facility if they are "securely contained to minimize the possibility of waste release prior to burial" and the person disposing of them obtains permission from

the waste collector or landfill permittee before depositing the waste. OAR 340-63-135. "Small amounts" are defined as follows:

Ignitable waste - up to 25 lbs./month

Corrosive waste - up to 200 lbs./month

Pesticides - up to 10 lbs./month

Halogenated hydrocarbons

or phenols - up to 200 lbs./month

Waste containing cyanide, arsenic,
cadmium, or mercury - up to 10 lbs./month

Waste containing hexavalent

chromium or lead - up to 200 lbs./month

OAR 340-63-110(2), 340-63-115(2), 340-63-125(1)(b), 340-63-125
(2)(b)(i), 340-63-125(3)(b).

2. Hazardous Waste Collection Site License

Oregon law requires a license to be obtained for either the collection or disposal of hazardous waste. If one proposes to "store" hazardous waste, i.e., contain it "for a temporary specified period of time in such manner as not to constitute disposal," OAR 340-62-010(11), one must first obtain a Hazardous Waste Collection Site License. ORS 459.505. The only exception to this requirement is for hazardous waste produced by a "generator" (i.e., "the person, who by virtue of ownership, management or control, is responsible for causing or allowing to be caused the creation of a hazardous waste," ORS 459.410(5)), which may be stored on the premises of that generator with no such license. ORS 459.505(3). It must be noted, however, that a generator must procure a license for the disposal of hazardous waste, notwithstanding his exemption from the collection site license.

Any person who generates hazardous waste must identify himself and his activity to DEQ. OAR 340-63-210. The waste must be managed "in a manner that will minimize the possibility of a dangerous uncontrolled reaction, the release of leachate, noxious gases or odors, fire, explosion or the discharge of such waste." OAR 340-63-215(1).

A generator is assigned certain responsibilities by the new Rules. Among these are:

- (1) To "become familiar with the hazards associated with the waste and the procedure to be followed in the event of an emergency situation."
- (2) To take "all necessary measures" to assure that his waste will be managed as Department rules provide, including those relating to the transportation, storage and disposal of hazardous waste.
- (3) To store hazardous waste no longer than 6 months without specific approval from DEQ.
- (4) To ensure that he has prior assurance of acceptance from the designated hazardous waste treatment or disposal facility before shipping such waste off his plant site.
- (5) To ensure that containers and tanks used to store hazardous wastes are adequately constructed to fully contain the waste. "Such storage must be ... adequately contained to minimize the possibility of spills or escape to the environment."

OAR 340-63-215.

"A generator may not ship hazardous waste off his plant site without also providing a properly completed manifest."

OAR 340-63-230(1). Requirements for such manifests are presented at OAR 340-63-230(2), (3), (4). Quarterly reports of all such manifests must be submitted to DEQ by the generator.

OAR 340-63-235.

Those who operate a "hazardous waste management facility, i.e. a collection, treatment or disposal site (OAR 340-63-011[14]), must follow general rules identical to those described above for generators of hazardous waste, OAR 340-63-420. Further requirements are established for those who accept shipments of hazardous waste in excess of 2000 pounds. OAR 340-63-425(1).

Any application for a new collection site license must include the experience of the applicant in handling hazardous substances; "the management program for the operation of the collection site, including the proposed method of storage, and the proposed emergency measures and safeguards to be provided for the protection of the public, the site employees, and the environment;" a description of the amount and type of material to be stored and the facilities to be constructed for its storage; the exact location where the applicant proposes to operate and maintain the collection site; a proposal for liability insurance "to protect the environment and the health, safety, and welfare of the people of the state;" and "a proposed program for continuous surveillance of the collection site and for regular reporting to the department." ORS 459.517, 459.535, 459.545; OAR 340-62-065(1). The Department may require the submission of any other information it deems necessary to make the licensing decision. OAR 310-62-065(3). In addition, the applicant is required to submit to the Department "final detailed plans and specifications covering construction and operation of the collection site and related facilities," which must receive written approval from the Department. OAR 340-62-070.

"Upon receipt of an application, the Department shall make such investigation as it considers necessary to determine whether or not a license should be issued." OAR 340-62-075(1). Once the determination has been made, the Department forwards the proposed license provisions and

conditions (if the determination is favorable) or the reasons for denial (if the determination is unfavorable) to the applicant. Id.; OAR 340-62-075(3). A 14-day period is allowed for comments, after which time the Department issues its final decision. OAR 340-62-075(2). If the Department refuses to issue a license, it must notify the applicant of his opportunity for a hearing before the Environmental Quality Commission. The applicant is given 20 days in which to request such a hearing. OAR 340-62-075(3).

The Department may immediately suspend or revoke the operation of a hazardous waste collection site if certain emergency circumstances (e.g. "a clear and immediate danger to the public health and safety") are found to exist from the continued operation of the site. OAR 340-62-085(1). Such action may also be taken with a 20-day notice if there is a violation of applicable law or rules governing collection sites. OAR 340-62-085(2).

3. Hazardous Waste Disposal Site License

No person may dispose of any hazardous waste anywhere in Oregon except at a hazardous waste disposal site licensed by the Department of Environmental Quality. ORS 459.510; OAR 340-61-060(2). An applicant for such a license must submit a statement of his financial condition; his experience in the construction, management, supervision

or development of hazardous waste disposal sites and in the handling of such substances; information concerning the planned construction of the site; and a \$5,000 nonrefundable fee. ORS 459.530. In addition, the license application must contain the following:

- (1) The management program for the disposal site, including the experience and qualification of the person responsible for its operation, the proposed method of disposal, and the proposed emergency measures to be provided.
- (2) A complete description of the facilities to be constructed.
- (3) A preliminary engineering sketch and flow chart showing the process by which the waste is disposed of.
- (4) A legal description of the lands to be used for the site.
- (5) "A preliminary geologist's survey report indicating land formation, location of water resources and direction of the flows thereof and his opinion relating to possible sources of contamination of such water resources."
- (6) The names and addresses of the applicant's proposed insurance carriers.

ORS 459.540. Public hearings must be held on all applications for hazardous waste disposal sites, and notice of these hearings must be given. ORS 459.550, 459.560. In addition, upon receipt of an application, the Department must send to "affected state agencies, including the Health Division, the Public Utility Commissioner, the State Fish

and Wildlife Commissioner and the Water Resources Director," a copy of the application. "Each agency shall respond by making a recommendation as to whether the license application should be granted. If the Health Division recommends against granting the license, the commission must refuse to issue the license. Recommendation from other agencies shall be considered as evidence in determining whether to grant the license." ORS 459.570.

Once the public and the affected state agencies have been heard from, the Department reviews the application, makes any investigation it considers necessary, and makes a recommendation to the Commission as to whether to issue the license. After reviewing the Department's recommendations, the Commission decides whether or not to issue the license and gives notice of its decision to the applicant. The decision of the Commission is subject to judicial review. ORS 459.580.

As a condition of issuance of the license, the licensee must deed to the State of Oregon all that portion of the hazardous waste disposal site in or upon which hazardous wastes shall be disposed of. ORS 459.590(1). As a condition of holding the license, the licensee is required to do the following:

(1) "Proceed expeditiously with and complete the project in accordance with the plans and specifications approved therefor."

(2) Begin operation of the site upon completion of the construction.

(3) Maintain an amount of liability insurance determined by the Department to be necessary to protect the environment, and the health, safety and welfare of the people of Oregon.

(4) Establish emergency procedures and safeguards necessary to prevent accidents and reasonably foreseeable risks.

(5) Restore, to the extent reasonably practicable, the site to its original condition when use for the area is terminated as a site.

(6) "Maintain a cash bond in the name of the state in an amount estimated by the department to be sufficient to cover any costs of closing the site and monitoring it or providing for its security after closure and to secure performance of license requirements."

(7) Make a periodic report on the volume of material received at the site.

ORS 459.590(2). The rules for suspension or revocation of a hazardous waste disposal site license are identical to those applicable to hazardous waste collection site licenses. OAR 340-62-045(1).

The Department may authorize the disposal of a specified hazardous waste at a specified solid waste disposal site established in accordance with the law applicable to such sites. ORS 459.510(3); OAR 340-62-100(1). "Such

authorization may be granted only under procedures approved by the commission, which shall include a determination by the department that such disposal will not pose a threat to public health and safety." It will be generally limited to wastes that are ignitable, corrosive, infectious or reactive, but not toxic. Id. In order to obtain this special Solid Waste Permit, "the applicant must demonstrate that the disposal will not pose a threat to the public health and safety or the environment to the properties of the waste, characteristics of the disposal site, the proposed handling procedure, and other relevant circumstances." OAR 340-62-100(3)(a). In addition, the waste generator must demonstrate that:

"(A) All practical steps have been taken to eliminate or minimize the generation of the waste and to recover, concentrate, or render the waste nonhazardous.

"(B) The disposal of the waste at a hazardous waste disposal site is burdensome to an extent which make such disposal severely detrimental to the generator's activities without providing commensurate environmental benefits."

OAR 340-62-100(3)(b).

Although the statutes provide general requirements for the setting of annual license fees for hazardous waste disposal sites, ORS 459-610, the Administrative Rules currently contain no provisions setting forth specific fees.

OREGON FOOTNOTES

1. ORS 197. "Land" includes water and the air--ORS 197.015(4).
2. ORS 197.175(2)(a).
3. ORS 197.040(2)(a).
4. LCDC, "Statewide Planning Goals and Guidelines", Oregon Coastal Management Program, pp. 127-216.
5. Fasano v. Washington Co. Comm. 264 or 574 (1973); Baker v. City of Milwaukee, N^O99, April 1, 1975 (Vol. 75, N^O11), Supreme Court of Oregon.
6. Land Conservation and Development Commission, Administrative Rule on State Permit Consistency, September 15, 1978. Review Criteria, S. 2.3(1) and (2).
7. Information supplied by Nancy Tuor, Coastal Management Program Division Manager, Land Conservation and Development Department (LCDD).
8. ORS 197.175-180.
9. supra, note 6.
10. ibid, Sec. 2.5.
11. CZMA, 16 USC. §§1451-64.
12. 16 USC. §1456(c)(3).
13. Oregon Legislative Assembly, Senate Bill 435, §§1-6a.
14. ibid, §§5, 6, and 6(a).
15. ORS 447.805(3).
16. ORS 447.820. The term "one stop" is a misnomer. The function of the State Permit Center is to coordinate, expedite and guide the applicant through the permit process, not to issue any permit itself.

17. ibid.
18. State Permit Center, 1979 Regulatory Permits Inventory
and ORS 447.855.
19. ORS 447.845.
20. ORS 447.855.
21. ORS 447.825.
22. ORS 447.834.
23. ORS 447.835.
24. ORS 447.850.
25. Information supplied by Mr. Paul Haugland.
26. ORS 197.175, 197.180.
27. Land Conservation and Development Commission Oregon
Coastal Management Program 1976, p. 15.
28. Oregon Department of Economic Development, Waterway
Development Handbook, June 1977, "Waterway Development
Control Matrix," p. 8.
29. Information supplied by Mr. Paul Haugland, Director of
the State Permit Center.
30. Information supplied by Ms. Nancy Tuor, LCDD.
31. Information supplied by Mr. George Grove, Executive
Director, Port of Astoria.
32. ORS 541.605 to 541.695. The pertinent regulations are
contained in OAR 141-85-100 to 141-85-505.
33. ORS 541.605(5) and (10); OAR 141-85-100(9) and (19).
34. ORS 541.625(1).
35. ORS 541.625(2).

36. ORS 541.625(3).
37. ORS 541 Section 5-HB 2619--1979 Session.
38. In one case mentioned, the applicant company had not yet developed a mitigation program after more than 13 months of the permit process.
39. Information supplied by Mr. Earle Johnson, State Lands Division and by Mr. Paul Haugland, State Permit Center.
- 39a. See note 6 supra, and accompanying text.
- 39b. ibid S. 2.2.
40. Information supplied by Mr. Earle Johnson, State Lands Division.
41. In this connection it should be noted that several State officials were of the opinion that the political climate and public opinion in Oregon had moved away from a strongly environmentalist, anti-development, position of a few years ago and was now much more receptive to this type of facility. The cause of this change was attributed to a variety of factors among which a recent decline in the traditional industrial base and rising unemployment were predominant.
42. State Land Board, "Rules for Leasing State-owned submerged or submersible lands," OAR 141-82-005 to 035; ORS 274.040, 274.915.
43. OAR 141-82-015.
44. OAR 141-82-020.
45. ORS 390.605 - 390-770.

- 46. ORS 390.650.
- 47. ORS 390.658.
- 48. Information supplied by Mr. Earle Johnson.
- 49. ORS 390.715.
- 50. OAR 340-21-060.
- 51. ORS 374.305, 758.010.
- 52. ORS 374.305.
- 53. note 50, supra.